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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,068

09/05/2003

Robert J. Levy

CHOP.0100.1

8339

110 7590 06/01/2007
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EXAMINER

PRIEBE, SCOTT DAVID

ART UNIT

PAPER NUMBER

1633

MAIL DATE

DELIVERY MODE

06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/656,068	LEVY ET AL.	
	Examiner	Art Unit	
	Scott D. Priebe, Ph.D.	1633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 34, 41-45, 52-60, 66 and 68-70.
Claim(s) withdrawn from consideration: 67.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Scott D. Priebe

Scott D. Priebe, Ph.D.
Primary Examiner
Art Unit: 1633

Continuation of 3. NOTE: The proposed amendment to claim 67 presents an embodiment based upon a new limitation that had not previously been under examination, and thus would require further search and consideration

Continuation of 11. does NOT place the application in condition for allowance because:
With respect to the rejection of claims 68-70 under 35 USC 112, first para. (new matter), page 14, lines 24-29, of the specification do not teach any particular process of denaturation. Page 28, lines 10-11, describes how one specific type of collagen was denatured under one specific set of conditions. Applicant asserts that it is improper to limit an application only to the preferred embodiment. In response, Applicant cites no authority to support this assertion. It remains that these claims are directed to a subgenus of denaturation conditions and collagen type that were not described in the original specification. As a result, there is no evidence that Applicant had contemplated or been in possession of the claimed subject matter.
With respect to the rejections under 35 USC 102 & 103, Applicant argues that the court in Rappaport did not rely on the difference in when the drug was administered between the prior art and the claimed invention. The Examiner disagrees, pages 1221 and 1222 are directed to pointing out the differences in when the medication is administered with respect to the purpose of the treatment to show that there are material and procedural differences between the prior art and claimed methods. The decision did not turn simply on the content of the preamble, but what that preamble meant in conjunction with the body of the claim. With respect to Marshall, Applicant's attention is respectfully directed to the top of page 347. The claims required a particular outcome, and while most do not recite a specific dose, it was clear from the record that the dose required to achieve the results set forth in the claims exceeded the dose the prior art recommended and warned against exceeding. The functional language of the claims implicitly limited the claims to doses required to meet the functional limitations.
Applicant suggests that the specification teaches that the denatured collagen (i.e. gelatin) need be prepared in certain ways to be effective, pointing to page 28 of the specification. It is believed that Applicant is misreading the specification here. The cells were grown on native collagen (which is not gelatin) or denatured type I bovine collagen. The denatured collagen was denatured under the conditions in lines 10-11. Both the native and denatured collagen were gelled under the conditions in line 9 in preparing the culture plates.

Applicant's remaining arguments rely upon the proposed amendment having been entered, and are therefore moot.